IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No. 566/2004

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 20th November, 2006

Heard Mr. M.L. Somalwar, the learned counsel for the appellant.

2. By this second appeal, the appellant takes exception to the Judgment and decree dated 10th June, 2004 passed by the Second Ad hoc Additional Judge, Chandrapur in Regular Civil Appeal No. 181/1996 dismissing the appeal filed by the appellant/ plaintiff against the Judgment and decree dated 27.9.1996 passed by the Civil Judge, Senior Division, Chandrapur in Special Civil Suit No. 53/1990.

3. The plaintiff- appellant filed the above referred suit for specific performance of contract dated 24.6.1986 entered between the plaintiff and the original defendant Maroti Gharate in respect of the suit land for a consideration of Rs. 30,000/-. At the time of the execution of the agreement earnest money of Rs. 8000/- was paid.

The sale-deed was to be executed on or before 30.5.1987. Since the defendant did not execute the sale-deed the plaintiff issued a notice (Exh. 34) on 21.4.1990 to the defendant. Since the defendant did not execute the sale-deed in spite of notice the plaintiff filed the above suit. The trial Court upon appreciation of the evidence led by the parties held that the plaintiff had not proved that he was ready and willing to perform his part of the contract and since the plaintiff had not proved this fact refused specific performance and granted refund of earnest money with interest thereon @ 6% p. a. from the date of the suit. The defendant expired during the pendency of the appeal before the lower appellate Court. The lower appellate court concurred with the findings given by the trial court. Mr. Somalwar, the learned counsel appearing for the appellant submitted that both the courts below erred in law in giving findings against the plaintiff about readiness and willingness on the part of the plaintiff to perform his part of the contract. The learned counsel further urged that the notice issued to the defendant as well as the suit was within the period of limitation and, therefore, the plaintiff could not have been non suited by both the courts below in so far as the prayer for specific performance is concerned. He, therefore, submitted that both the decrees are liable to be set aside.

4. Having perused the Judgments passed by both

the courts below and having considered the submissions made by the learned counsel, I find myself unable to accept the submissions made on behalf of the appellant. It is well settled by catena of decisions of the apex Court that grant of specific performance is discretionary and in a suit for specific performance the plaintiff has to aver and prove that he was ready and willing to perform his part of the contract from the date of the agreement till the date of filing of the suit. In the present case, both the courts below upon appreciation of the evidence led by the parties have come to the conclusion that the plaintiff did not lead any evidence to establish readiness and willingness of his part of the contract although the suit was filed within time. The finding about readiness and willingness given by both the courts below is a finding of fact which has been rightly arrived at by both the courts below. Hence, I find no ground to interfere in this second appeal. No substantial question of law is involved as required in terms of section 100 of the Code of Civil Procedure. Hence, the appeal is summarily rejected.

Judge

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